Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-663

ROBERT FRIAS, [redacted]L.,

Petitioners,

versus

THE BOARD OF TRUSTEES OF THE ECTOR COUNTY INDEPENDENT SCHOOL DISTRICT, ET AL.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE EIGHTH SUPREME JUDICIAL DISTRICT COURT OF CIVIL APPEALS OF TEXAS

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October, 1979

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IN THE
SUPREME COURT OF THE UNITED STATES
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No.

ROBERT FRIAS, ~~ET AL.~~,
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THE BOARD OF TRUSTEES OF THE ECTOR COUNTY INDEPENDENT SCHOOL DISTRICT, ET AL.,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE EIGHTH SUPREME JUDICIAL DISTRICT COURT OF CIVIL APPEALS OF TEXAS

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States.

Robert Frias, ~~et al~~, the Petitioners herein, pray that a Writ of Certiorari issue to review the judgment of the Eighth Supreme Judicial District Court of Civil Appeals at El Paso, Texas, entered in the above-entitled case on July 25, 1979.

OPINIONS BELOW

The opinion of the Eighth Supreme Judicial District Court of Civil Appeals of Texas at El Paso, Texas, is unreported and is printed in Appendix A hereto, infra, pages 2a-14a. The Order of the Supreme Court of Texas is printed in Appendix A hereto, infra, page 17a.

JURISDICTION

The judgment of the Eighth Supreme Judicial District Court of Civil Appeals of Texas (Appendix A, infra, pages 14a-15a) was entered on July 25, 1979. A timely Petition for Rehearing was denied on August 15, 1979, (Appendix A, infra, pages 15a-16a). The Dismissal for Want of Jurisdiction by the Texas Supreme Court was entered on October 3, 1979 (Appendix A, infra, page 17a). The jurisdiction of the Court is invoked under 28 U.S.C.A. §1257(3).

QUESTIONS PRESENTED

Is there analogy in the cry of "fire" in a crowded theatre and a corporation without regard for the truth contributing to political associations to disseminate erroneous propaganda, thereby nullifying Petitioners' rights of freedom of expression, due process and equal protection guaranteed by the First, Fifth and Fourteenth Amendments to the United States Constitution.

Whether the court made law limiting jurisdiction to matters happening on the day of election and excluding from inquiry in an election contest the intentional misrepresentation of fact to promote the passage of a bond issue violated Contestants' constitutional rights of freedom of expression, to petition for redress of grievances, due process and equal protection guaranteed by the First, Fifth and Fourteenth Amendments to the United States Constitution.

CONSTITUTIONS AND STATUTES INVOLVED

Vernon's Annotated Texas Statutes Election Code

Article 5.01, Classes of persons not qualified to vote (Appendix B, infra, page 18a)

Article 9.30, Other contested elections (Appendix B, infra, pages 18a-19a)

Article 9.03, Notice of Contest (Appendix B, infra, page 19a)

Article 14.06, Corporations and Labor Organizations not to contribute (Appendix B, infra, pages 22a-25a)

Article 15.17, Corporation contributing (Appendix B, infra, pages 19a-22a)

Texas Constitution, Article 1 §13: Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted. All courts shall be open, and every person for an injury done

him, in his lands, goods, person or reputation, shall have remedy by due course of law.

Texas Constitution, Article 1 §15: The right of trial by jury shall remain inviolate. The Legislature shall pass such laws as may be needed to regulate the same, and to maintain its purity and efficiency.

Texas Constitution, Article 1 §27: The citizens shall have the right, in a peaceable manner, to assemble together for their common good; and apply to those invested with the powers of government for redress of grievances or other purposes, by petition, address or remonstrance.

Texas Constitution, Article VI §1: The following classes of persons shall not be allowed to vote in this State to wit:

First: Persons under twenty-one (21) years of age.

Second: Idiots and lunatics.

Third: All paupers supported by any county.

Fourth: All persons convicted of any felony, subject to such exceptions as the Legislature may make.

Amendment 1 to the United States Constitution: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Amendment 5 to the United States Constitution: No person shall be held to answer for a capital or other infamous crime unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger; nor shall any person be subject, for the same offense, to be twice put in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Section 1 of the Fourteenth Amendment to the United States Constitution: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside.

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT

Preliminarily, Petitioners respectfully request the Court to note that time is of the essence in this case. Respondents, the school trustees, are spending tax

dollars to proceed with the illegally authorized construction. All property owners within the taxing district are suffering excessive tax burdens on their homesteads and other property. Petitioners are ready to meet any schedule for briefing and oral argument that the Court may wish to set. This petition may, if certiorari is granted and the court wishes, be treated as Petitioners' Brief on its merits. It is submitted that this expedited procedure is authorized by another election case, *Ray v. Blair,* 343 U.S. 901 (1952) in which certiorari was granted on March 24, 1952, the case was argued on March 31, 1952, and a decision was announced on April 3, 1952. See 343 U.S. 154, 214.

112 pro se Contestants filed 3 statutory Notices of Contest of the December, 1978, school bond election authorizing the issuance of 21.6 million dollars in bonds by the Ector County Independent School District. Contestants claimed intentional misrepresentations of fact by the school trustees to purposely mislead the voters making it impossible to ascertain the true will of the majority of the qualified voters participating in the school bond election. The State District Court dismissed each of the pro se Contestants who were absent from the second Hearing on the Plea in Abatement or who were not ready in that hearing to go forward with the evidence in the case. Then the Court on its own motion consolidated the three Notices of Election Contest and ordered the remaining Contestants to jointly make discovery, present evidence and arguments to the court. The Contestants were denied a

jury trial on the issue of actionable fraud committed by the school trustees in disseminating false information concerning the necessity of bond issues. In a Hearing before the court, the pro se Contestants proved by stipulations and testimony and evidence that intentional misrepresentations of fact had been made by the school board. The Contestants also proved the corporate contributions to a political committee were used to publish the false information through the mass media.

The Court of Civil Appeals held that the Court's jurisdiction is limited to matters happening on the day of the election and pertaining strictly to the election. Ergo: The misleading statements and misrepresentations of facts by the school board and its employees do not constitute proper grounds for an election contest. The Court affirmed the lower court that contributions by National banks and Texas business corporations in support of the bond election do not constitute proper grounds for contest of an election. The Court of Civil Appeals held that insofar as *Article 14.06 Texas Election Code* (Supra App. B) prohibits corporations from making contributions and expenditures "for the purpose of aiding or defeating the approval of any measure submitted to vote of the people of this state or any subdivision thereof" it is unconstitutional. The Court held that an election contest is strictly a statutory right and that the Contestants were not entitled to a trial by a jury. The Court of Civil Appeals cited *First National Bank of Boston v. Bellotti,* 435 U.S. 765 (1978) that the prohibition of corporate expenditures to influence referen-

dum elections was an unconstitutional abridgment of free speech under the First and Fourteenth Amendments. Petitioners certify the factual circumstances in the instant case are clearly distinguishable rendering the *Bellotti* decision inapposite. The decision below clearly violates Contestants' right to procedural due process and equal protection under the First, Fifth and Fourteenth Amendments to the United States Constitution.

REASONS FOR GRANTING THE WRIT

This case concerns the constitutional rights of taxpayers to effectively contest a school bond election against the absolutism by the school trustees and the controlling financial power of the Corporations. An election contest is meant to embrace any type of suit in which the validity of an election or any part of the elective process is the subject matter of the litigation. *Clary v. Hurst,* 138 S.W. 566 (Tex. Sup. 1911) The statutory remedy for contesting elections for irregularities or fraud is exclusive of all others. *Texas Election Code,* art. 9.30 (infra Appendix A pages 18a-19a); *Slater v. Ellis County Levee Improvement District,* 36 S.W.2d 1014, 1017 (Tex. Comm. Ap. 1931, Op. Adpt.) Against these precedential limitations 112 pro se Contestants filed 3 Notices of Contest of the December, 1978, school bond election. Contestants in their sworn petitions alleged the school trustees, Respondents, and their employees intentionally misrepresented facts concerning the

needs of the school district. Contestants also alleged local banks and Texas business corporations through their contributions funded the dissemination of these misrepresentations. The Contestants' constitutional rights of equal protection under the Fourteenth Amendment were denied by the lower court's refusal to exclude from counting the votes cast by constitutionally and statutorily disenfranchised voters. Article VI §1 of the *Texas Constitution;* Article 5.01 *Texas Election Code; Richardson v. Ramirez,* 418 U.S. 24 (1974).

The Court of Civil Appeals judicially construed the Texas Election Code further limiting these Contestants to only matters that happened on the day of the election and pertaining strictly to the election as subject to inquiry or determination by the court in an election contest. Contestants are constitutionally entitled to access to the courts to seek redress for the admitted misrepresentations of facts by Respondents prior to the election day and other specified irregularities in the election process. The entire election process is a proper matter for inquiry in a contested election. *Dickson v. Strickland,* 65 S.W. 1012, 1018 (Tex. Sup. 1924). Petitioner's constitutional claim is based on the cumulative effect of procedural rulings denying Contestants access to the courts in violation of their rights under the First, Fifth and Fourteenth Amendments to the United States Constitution. The Courts' denial of the jury trial violated Petitioners' constitutional right to a trial by jury. Article I §15 *Texas Constitution:*

"The right of trial by jury shall remain inviolate . . ." Vernon's Texas Constitution

These Contestants were relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process. The Texas Election Code requirements for minimum time of giving notice of election and absentee balloting negate this judicial limitation of contest of the election process to the day of balloting only.

The First Amendment to the United States Constitution (supra, page 4) is a constitutional mandate that all courts shall be open and that every person for an injury done him shall have remedy by due course of law. The Texas Election Code as judicially interpreted precluded the exercise of fundamental rights and liberties explicitly protected by the Constitution. Petitioners ask this court to give this constitutional right of access to courts no less protection than the Constitution itself demands which is strict judicial scrutiny under the equal protection clause of the Fourteenth Amendment. Federal Courts sit to enforce the constitutional rights of all persons. Individuals have the right to petition the government for redress of grievances. *Cruz v. Beto*, 405 U.S. 319, 321 (1972).

It is important that all persons have right of access to the courts. *Bounds, Correction Commissioner v. Smith*, 403 U.S. 817 (1977) holding prisoners have a constitutional right of access to court; *Fuentes v. Shevin and Parham v. Cotese*, 407 U.S. 67 (1972) granting the right of hearing before the loss of possession of chattels; *Boddie v. Connecticut*, 401 U.S. 371 (1971) holding the State denied due process of law to indigent persons by requiring payment of fees to file divorce actions; *Goldberg v. Kelley*, 397 U.S. 254 (1970) procedural due process under the 14th Amendment requires evidentiary hearing before termination of benefits. The fundamental right of due process is the opportunity to be heard "at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545 (1965).

Dunn v. Blumstein, 405 U.S. 330 (1972) fully canvasses this Court's voting rights cases and explains that "this Court has made clear that a citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction.". Id., at 336. Corporate contributions vitiate the equality of participation.

The state court's judicial limitation of the scope of an election contest to the day of balloting precludes appropriate retribution for the erroneous propaganda by the school officials which intentionally misled the voters to vote for the bond issues. The mass proliferation of misleading information by the indiscriminate corporate contributions to an irresponsible political committee narrowly passed these bond issues; although, the same bond issues had failed to pass on three previous occasions. The imposition of an excessive tax burden on

the property owners of the school tax district resulted from contributions by corporations which failed to be responsible for the *truthfulness* of the information disseminated by the political committee. This had a deleterious effect on the voters.

"The freedom of speech and of the press guaranteed by the Constitution embraces at least the liberty to discuss publicly and *truthfully* all matters of public concern. . ." (emphasis added). *First National Bank of Boston v. Bellotti,* 435 U.S. 765 at 776 (1978). *Bellotti* gave no perimeters of the First Amendment freedoms of a corporation — but the Court did reiterate its limitations on the quality of the speech protected. In the instant case, the misrepresentations were made by individuals but the power of misleading the voters was the corporate contributions. There is no question of the impact of this corporate financial power in the December, 1978, school bond election. *Buckley v. Valeo,* 424 U.S. 1 at 14 (1976) indicates the importance of the distinction between "expenditures" and "contributions."

Some forms of commercial speech regulation are still permissible. Appropriate time, place and manner restrictions may be imposed on commercial speech and false or misleading advertisements may be forbidden. *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.,* 425 U.S. 748 at 770-72 (1976); *Bates v. State Bar of Arizona,* 433 U.S. 350, 383-84 (1977); *Linmark Associates, Inc. v. Township of Willingboro,* 431 U.S. 85, 93-94 1977); *Ohralik v. Ohio State Bar Association,* 436 U.S. 447, 453 (1978). In *Virginia Board of Pharmacy* the Court observed:

> Obviously, much commercial speech is not provably false, or even wholly false, but only deceptive or misleading. We foresee no obstacle to a State's dealing effectively with this problem. The First Amendment, as we construe it today, does not prohibit the State from insuring that the stream from commercial information flow cleanly as well as freely. 425 U.S. at 771-72.

To permit a corporation to irresponsibly contribute to political associations is analogous to allowing an individual to shout "fire" in a crowded theatre. This corporate financial power not only threatened but did in fact undermine a democratic process thereby denigrating rather than serving First Amendment interest. Categorically, the record in the instant case substantiates Mr. Justice White's argument that because corporations are given certain privileges by law they are able to "amass wealth" and then to "dominate" debate on the issue. (435 U.S. at 809, 821). The Texas Legislature in 1977 amended Article 14.06 (infra. Appendix B pages 22a-25a) and Article 15.17 (infra. Appendix B pages 19a-22a) of the Texas Election Code limiting corporate expenditures because Texas recognized that corporations would use their economic power to obtain further benefits beyond those already bestowed by the Business Corporation Act.

Bellotti stated, "preserving the integrity of the electoral process, preventing corruption, and sustaining

the active alert responsibility of the individual citizen in a Democracy for the wise conduct of government are interests of the highest importance." (435 U.S. 788-789). This interest of "preventing corruption" has been destroyed in the instant case. The school trustees stipulated to their misrepresentations of fact, and corporate contributors blatantly testified to their irresponsibility for the erroneous information magnified by their unlimited contributions.

"Question: [Contestant] Had you known the information you were receiving was incorrect or incomplete would you still have contributed?

Answer: [Mr. Jumper, President of National Bank of Odessa] That is conjecture. I don't know."

(Excerpt from Statement of Facts vol. one, pg. 223, Hearing of 3-13-79)

"Question: [Contestant]: If you had wished to make a $10,000.00 contribution, Mr. Jumper, would you have had the authority with which to make it?

Answer: [Jumper]: Yes, sir."

(Excerpt from Statement of Facts Vol. one, pg. 216, Hearing of 3-13-79)

This testimony verifies the irresponsible corporate contributions to control the voters in the school bond election.

CONCLUSION

Wherefore, Petitioners pray that a Writ of Certiorari issue from this Honorable Court to the Eighth Supreme Judicial Court of Civil Appeals of Texas in *Frias, et al v. The Board of Trustees of the Ector County Independent School District, et al.* In the event that the Petition is granted, Petitioners pray that the judgment of the court below be reversed, that the cause be remanded, and that the court below be directed to allow the Contestants in an election access to the courts for redress of their grievances from the day of the calling of the election to the time of certification of the results of the election; and that the court below be directed to limit the exercise of First Amendment rights to the standard of Truth.

Respectfully submitted,

GLORIA TANNER SVANAS
Attorney for Petitioners
1813 East Eighth Street
Odessa, TX 79761

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY THAT three true and correct copies of the above and foregoing Petition for Writ of Certiorari have this the ____ day of October A.D., 1979, been placed in the United States mail postage prepaid, addressed to the Honorable Robert B. Cox, McMahon, Cox, Todd, Tidwell and Bangert, P.C., Attorneys at Law, Post Office Box 1311, Odessa, Texas 79760, and to the Honorable Mike Atkins, County Attorney, 223 Ector County Courthouse, Odessa, Texas 79761.

GLORIA TANNER SVANAS

APPENDIX "A"

COURT OF CIVIL APPEALS
EIGHTH SUPREME JUDICIAL DISTRICT

El Paso, Texas, July 25, 1979

Hon. Gloria T. Svanas
Attorney at Law
1813 East Eighth Street
Odessa, Texas 79761

Madam:

You are hereby notified that, in the case of ROBERT FRIAS, Appellant, vs. BOARD OF TRUSTEES OF ECTOR COUNTY INDEPENDENT SCHOOL DISTRICT, ET AL., Appellees, our No. 6900, from Ector County, the following decision and order was this day made and entered by the Court:

The Honorable Court of Civil Appeals today rendered judgment affirming the judgment of the trial Court.

Respectfully yours,

ANNE D. RAY, Clerk

COURT OF CIVIL APPEALS
EL PASO

ROBERT FRIAS,

Appellant,

versus No. 6900

BOARD OF TRUSTEES OF ECTOR COUNTY INDEPENDENT SCHOOL DISTRICT, ET AL.,

Appellees.

Appeal from the District Court
of Ector County, Texas

OPINION

This is a contest of a school bond election in which a majority of the votes cast were in favor of authorizing the Ector County Independent School District to issue 21.6 million dollars in bonds. The funds raised by the issuance of the bonds were to be used primarily for extensive renovating and refurbishing of existing buildings, the construction of two new elementary schools and one new junior high and for a new athletic stadium. On the ballot, Proposition No. One called for $8,754,563.00 in bonds for additions and improvements at existing facilities, Proposition No. Two called

for $9,293,193.00 in bonds for new school construction, and Proposition No. Three called for $3,500,000.00 in bonds for the new sports complex. The estimated cost of the issuance of the bonds was $53,000.00. Proposition No. One passed by more than 1,000 votes, No. two by more than 750 votes, and No. Three by more than 400 votes, all out of a total of more than 17,000 votes.

This case began with 111 pro se Contestants. At a pre-trial hearing, only 11 Contestants indicated they would present any affirmative evidence in the case and all others were dismissed. Only 1 of those 11, Robert Frias, has filed an appeal bond and he is the only party before the Court on this appeal, although Contestant's brief purports to be on behalf of 106 Contestants. Rules 354, 356, Tex.R.Civ.P.; Davies v. Massey, 561 S.W.2d 799 (Tex. 1978); Owen v. Brown, 447 S.W.2d 883 (Tex. 1969); Warren v. Kyle, 565 S.W.2d 313 (Tex.Civ.App.—Austin 1978, no writ); Roth v. Maryland American General Insurance Company, 454 S.W.2d 779 (Tex.Civ.App.—San Antonio 1970, writ ref'd).

The trial Court, after a lengthy trial, denied all relief sought by the Contestants, and upheld the bond election and the results thereof which favored the issuance of the bonds. The Court subsequently filed Findings of Fact and Conclusions of Law, and amended findings of fact and conclusions of law. The judgment recites:

The Court, having previously refused Contestants' request for trial by jury, and after presentation of the testimony, evidence and arguments has found that Contestants have failed to prove by a preponderance of the legal and competent evidence (1) a fraudulent election; (2) that there were any invalid votes cast in such election sufficient to change the results thereof; or (3) that a determination of the true will of a majority of the qualified voters in such election is impossible. Based on such findings the Court is of the opinion that judgment should be rendered in favor of Contestees.

Appellant's first point of error asserts the trial Court erred in not finding as a matter of law that the entire election process is a proper matter for inquiry in a bond election contest. This is basically an attack upon the Court's Conclusion of Law No. 1 which holds:

1. Misleading statements and misrepresentations of facts by Contestees and school district employees alleged to have occurred prior to the December 5, 1978 bond election did not constitute any proper grounds for an election contest, as only such matters as happened on the day of the election and pertain strictly to the election itself are within the Court's jurisdiction and may be inquired into or determined by the Court in an election contest.

Appellant relies primarily upon Dickson v. Strickland, 114 Tex. 176, 265 S.W. 1012 (1924), where the court said:

> An election contest necessarily involves questions of both fact and law. It may be predicated upon a status or upon facts which existed before an election, upon what took place at the election, and perhaps in some instances upon a status or what took place after an election. The ineligibility of a candidate before an election whether arising from lack of age, or from personal misconduct, or other infirmities, the manner of giving notice of the election, appointing election officers, their qualification, the creation of election districts, the preparation of the polls or polling places, the manner in which the ballots may have been prepared, and various other things which of necessity precede an election, are all well known subjects of election contests.

Other courts have held that jurisdiction in election contests is limited to such matters as tend to show that the election was not properly ordered or fairly conducted, such as the failure to give notice of the time and place where the election is to be held or that illegal votes were cast thereat, or some other matter which would impeach the fairness of the result. Trimmier v. Carlton, 264 S.W. 253 (Tex.Civ.App.—Austin 1924), aff'd 116 Tex. 572, 296 S.W. 1070 (1927).

The more recent rule is that only matters that happen on the day of the election and pertain strictly to the election may be inquired into or determined by the court in an election contest. Harrison v. Jay, 280 S.W.2d 636 (Tex.Civ.App.—Eastland 1953), aff'd 153 Tex. 460, 271 S.W.2d 388 (1954). The most recent case to consider the issue is Stelzer v. Huddleston, 526 S.W.2d 710 (Tex.Civ.App.—Tyler 1975, writ dism'd), where the court said:

> Elections may be contested only on grounds expressly or impliedly authorized by the Election Code. 21 Tex.Jur.2d Elections, sec. 158, p. 413. Article 9.15 of the Texas Election Code authorizes the courts to declare an election void in those instances where it appears that it is impossible to ascertain the true result of an election and in instances where such a number of legal voters were, by the officers or the managers of the election, denied the privilege of voting so as to change the result of the election. In an election contest only such matters as happened on the day of the election and pertaining strictly to the election itself may be inquired into or determined by the courts. Harrison v. Jay, 153 Tex. 460, 271 S.W.2d 388 (1954); Oser v. Cullen, 435 S.W. 2d 896 (Tex-.Civ.App., Houston, 1968, dismissed). We fail to find any evidence showing that any of the school's trustees or any other official of the School District stated to the public that only a

> 'slight' increase of taxes would be necessary to support the bond issue. But even if such were the case, under the foregoing rules of law, such alleged misleading statements being made prior to the election could not be inquired into or considered by the court.

Recognizing the conflict in these cases, we feel compelled to follow the more recent authorities. As noted in an article by Josias Wheat entitled "The Statutory Election Contest," 21 Texas Bar Journal 629 (1958), "The great weight of authority of this state would appear to be * * * that the courts' jurisdiction is limited to matters happening on the day of the election and pertaining strictly to the election." Even if we should be wrong in this regard, the election was a correct and proper one for reasons hereafter discussed under the remaining points of error. Point of Error No. 1 is overruled.

The next point asserts the trial Court erred in finding that the misleading statements and material misrepresentations of fact by school trustees and school employees made it impossible to ascertain the true will of the majority of the voters. In this case, which was required to be tried to the Court as a statutory procedure, the trial Judge was necessarily the trier of facts and he determined the credibility of witnesses and the facts which were proven. His second and fourth Findings of Fact state:

2. No material misrepresentations of fact or misleading statements were made by Contestees or the employees of such school district prior to the December 5, 1978 school bond election.

* * *

4. There were no illegal or fraudulent votes cast in the December 5, 1978 school bond election.

The evidence supports those findings. Even if we consider matters which might have affected the election at times prior to election day, there is no proof that those matters were of such nature as to affect the result of the election. There is no proof of any fraud, and no voters testified that they were misled or believed what is now contended to be misrepresentations or that such affected their vote. In Marks v. Jackson, 130 S.W.2d 925 (Tex.Civ.App.—Galveston 1939, writ dism'd), the court considered a contest of a school bond election and said:

> Two well-settled rules of law governing such controversies as the one at bar may be thus stated:
>
> (1) '* * * In a statutory election contest within the purview of cited chapter 9, title 50, article 3041 et seq., of our Revised Statutes, such as this one was, the scope of the court's

> inquiry is limited to matters pertaining strictly and directly to the election itself, together with happenings on the date thereof, such as the casting and counting of ballots voted therein, as well as the action and conduct of the officers holding it.' Border v. Abell, Tex. Civ.App., 111 S.W.2d 1186, 1188, writ of error refused.
>
> (2) In an election-contest, the burden is on the contestants to allege and prove either that a different result should have been reached by counting or not counting certain specified votes; or that the irregularities in the conduct of it were such as to render it impossible to determine the true will of the majority of the voters participating in the election; and irregularities in the conduct of the election, which cannot be demonstrated to have materially affected the result, are immaterial. Hill v. Smithville, etc., (Tex.Com.App.), 251 S.W. 209; Kincannon v. Mills, (Tex.Civ.App.), 275 S.W. 1083, 1084; McCormick v. Jester, 53 Tex.Civ.App. 306, 115 S.W. 278; State v. Etheridge (Tex.Civ.App.), 20 S.W.2d 808; State v. Fletcher (Tex.Civ.App.), 50 S.W.2d 450; Wilmarth v. Reagan (Tex.Civ.App.) 231 S.W. 445.

Point of Error No. 2 is overruled.

The next point asserts the trial Court erred in not requiring the exclusion of all votes cast by disqualified voters as specified by the Texas Constitution. Article VI, section 1, of the Texas Constitution and Article 5.01 of the Texas Election Code does prohibit certain classes of people, such as idiots and lunatics, paupers and convicted felons from voting in an election. The argument under this point seems to be based upon a motion filed by Contestant, George Roeder, to declare the election void. In the first place, this Contestant did not appeal the Court's ruling on his motion, and he is not before this Court as an Appellant. The trial Court found that no illegal or fraudulent votes were cast in the bond election and the evidence supports that finding. The one Contestant who has appealed had the burden of proof to show that there were enough illegal votes cast to change the results of the election. There is no proof to meet that burden in this case. Merely alleging irregularities does not meet the burden of proof. Fox v. Nail, 294 S.W.2d 407 (Tex.Civ.App.—El Paso 1956, no writ). Point of Error No. 3 is overruled.

The next point asserts the trial Court erred in finding that corporate contributions in violation of Texas Statutes were permissible in the school bond election. Article 14.06 of the Texas Election Code makes it unlawful for corporations and labor organizations to make a contribution or expenditure for a political committee. In this case, there was a political committee, named United for Odessa, which received contributions from several corporations and used such money to promote passage of the bond issue.

Only last year, the United States Supreme Court in First National Bank of Boston v. Bellotti, 435 U.S. 765, 98 S.Ct. 1407, 55 L.Ed.2d 707 (1978), held a Massachusetts statute prohibiting corporate expenditures to influence referendum elections to be an unconstitutional abridgment of free speech under the First and Fourteenth Amendments. See "Corporations' Right to Free Speech in Referendum Elections: First National Bank v. Bellotti," 32 Sw. L. J. 1359 (1979).

On June 6, 1978, the Attorney General of Texas in Opinion No. H-1175, based largely upon the holding in Bellotti, said:

> Insofar as article 14.06 Texas Election Code, prohibits corporations from making contributions and expenditures 'for the purpose of aiding or defeating the approval of any measures submitted to a vote of the people of this state or any subdivision thereof,' it is unconstitutional.

We conclude that that opinion is correct. Point of Error No. 4 is overruled.

The next point asserts the trial Court erred in denying Contestants' constitutional right of trial by jury. Both the Seventh Amendment to the United States Constitution and Article I, Section 15, of the Texas Constitution guarantee the right of a trial by jury. But

those provisions were enacted to protect rights known at common law. This case does not involve a common law right. Johnson v. Stevenson, 170 Fed.2d 108 (5th Cir. 1948, cert. denied 336 U.S. 904). This contest is strictly a statutory right. The courts of this State have consistently held that in an election contest the contestants are not entitled to a trial by jury. Boroughs v. Williamson, 312 S.W.2d 717 (Tex.Civ.App.—El Paso 1958, writ dism'd); Rouw v. Harrington, 281 S.W.2d 746 (Tex.Civ.App.—San Antonio 1955, writ dism'd); 3 McDonald, Texas Civil Practice Section 11.02 (1970). Point of Error No. 5 is overruled.

The next contention is that the trial Court erred in dismissing the pro se Contestants at a hearing on a plea in abatement. None of those Contestants have filed an appeal bond, and they are not before this Court. The issue has not been preserved and the sixth point of error is overruled.

The seventh point contends the trial Court abused its discretion at the plea in abatement hearing. Again, the parties affected have not perfected an appeal and the point of error is overruled.

The last point of error asserts the trial Court erred in finding no irregularities occurred in the conduct of the bond election which rendered it impossible to determine the will of a majority of the voters. Giving the Contestants the benefit of the doubt and concluding

that there may have been in some instances a failure to strictly follow the provisions of the Election Code, there is no evidence of any election fraud, no evidence that the voters were deceived, and certainly no evidence that there were a sufficient number of improper or illegal votes cast as would have changed the results of the election as to any one of the three propositions submitted to the voters. In Little v. Alto Independent School District of Alto, Cherokee County, Texas, 513 S.W.2d 886 (Tex.Civ.App.—Tyler 1974, writ dism'd), the court considered a contest in a school bond election. In commenting upon the contentions that there had been a failure to strictly follow the Election Code, the court said:

> In general, the statutes regulating the manner of holding an election are directory and a departure from their provisions will not ordinarily invalidate an election, unless such departure affects or changes the results of the election. Hill v. Smithville Independent School District, 251 S.W. 209 (Tex. Com.App., 1923, opinion adopted); Kincannon v. Mills, 275 S.W. 1083 (Tex.Civ.App., Waco, 1925, writ ref'd); Baker v. Scranton Independent School District, 287 S.W.2d 210 (Tex.Civ.App., Eastland, 1956, n.w.h.); Minthorn v. Hale, 372 S.W.2d 752 (Tex.Civ.App., Beaumont, 1963, n.w.h.); Sawyer v. Board of Regents of Claredon Junior College, 393 S.W.2d 391

(Tex.Civ.App., Amarillo, 1965, n.w.h.). While it is true that statutory enactments concerning elections must be strictly enforced to prevent fraud, they must also be liberally construed in order to ascertain and effectuate the will of the voters. Turner v. Teller, 275 S.W. 115 (Tex.Civ.App., San Antonio, 1925, n.w.h.). Therefore this court cannot agree with appellants' contention that the trial court erred in concluding that there was no fraud in holding the election. There was no showing that any of the alleged irregularities affected or changed the results of the election. The mere fact that some directory provisions of the Election Code were not followed by the election officials would not by itself constitute fraud. Thompson v. Barnes, 309 S.W.2d 399 (Tex.Civ.App., Eastland, 1966, dism'd).

Point of Error No. 8 is overruled.

The judgment of the trial Court is affirmed.

July 25, 1979 PER CURIAM

No. 6900 — Robert Frias v. Board of Trustees of Ector County Independent School District, et al., from Ector.

JUDGMENT

This cause came on to be heard on the transcript of the record, and the same being inspected, because it is the opinion of this Court that there was no error in the judgment, it is therefore ordered, adjudged and decreed that the judgment of the Court below be in all things affirmed; and that the appellees, Board of Trustees of Ector County Independent School District and W. M. Holm, Superintendent of Schools of such District, do have and recover of and from the appellant, Robert Frias, and his sureties, George Roeder and Van Canfield, all costs incurred by reason of this appeal, and this decision be certified below for observance.

[July 25, 1979]

COURT OF CIVIL APPEALS
EIGHTH SUPREME JUDICIAL DISTRICT

El Paso, Texas, August 15, 1979

Hon. Gloria T. Svanas
Attorney at Law
1813 East Eighth Street
Odessa, Texas 79761

Madam:

You are hereby notified that, in the case of ROBERT FRIAS, Appellant, vs. BOARD OF TRUSTEES OF EC-

TOR COUNTY INDEPENDENT SCHOOL DISTRICT, et al., Appellees, our No. 6900, from Ector County, the following decision and order was this day made and entered by the Court:

The Honorable Court of Civil Appeals today rendered its order overruling Appellant's motion for rehearing.

(No opinion).

Respectfully yours,

ANNE D. RAY, Clerk.

CLERK'S OFFICE - SUPREME COURT

Austin, Texas, Oct. 3, 1979

Dear Sir:

You are hereby notified that the Application for Writ of Error in the case of

NO. B-8833: Robert Frias
vs.
Board of Trustees of Ector Co.
Independent School District et al.

was this day dismissed for want of jurisdiction.

Motion to advance is granted. No motion for rehearing will be entertained.

Very truly yours,
GARSON R. JACKSON, Clerk

CLERK, SUPREME COURT OF TEXAS
BOX 12248, CAPITOL STATION
AUSTIN, TEXAS 78711

AUSTIN, TEX. 78711 PM OCT 1979

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THIS SIDE OF CARD IS FOR ADDRESS

Ms. Gloria T. Svanas, Atty
1813 East Eighth St.
Odessa, TX 79761

OCT. 6 1979

APPENDIX "B"

Vol. 9, Vernon's Annotated Texas Statutes Election Code

Article 5.01 Classes of persons not qualified to vote

The following classes of persons shall not be allowed to vote in this state:

1. Persons under 18 years of age.
2. Idiots and lunatics.
3. All paupers supported by the county.
4. All persons convicted of any felony except those restored to full citizenship and right of suffrage or pardoned.

Amended by Acts 1975, 64th Leg., p. 2082, ch. 682, §3, eff. Sept. 1, 1975. (1978-1979 Suppl).

Art. 9.30 Other contested elections

If the contest be for the validity of an election held for any other purpose than the election of an officer or officers in any county or part of a county or precinct of a county, or in any incorporated city, town, or village, any resident of such county, precinct, city, town, or village, or any number of such residents, may contest such election in the district court of such county in the same manner and under the same rules, as far as

applicable, as are prescribed in this chapter [arts. 9.01-9.38] for contesting the validity of an election for a county office. Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 158.

Art. 9.03 Notice of contest

Any person intending to contest the election of any one holding a certificate of election for any office mentioned in this law, shall, within thirty (30) days after the return day of election, give him a notice thereof in writing and deliver to him, his agent or attorney, a written statement of the ground on which such contestant relies to sustain such contest. By the "return day" is meant the day on which the votes cast in said election are counted and the official result thereof declared. Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 131.

Art. 15.17 Corporation contributing

(a) In any election in this State or any district, municipality, or political subdivision thereof, wherein the question to be voted upon directly affects the granting, refusing, existence or value of any franchise granted to a corporation which has the right of eminent domain, such corporation may present facts and arguments to the voters bearing upon such question by any lawful means of publicity and pay the expense thereof; provided, however, that all such means of publicity employed shall contain a clear statement that the same are sponsored and paid for by such corporation;

and the use of any such means of publicity by such corporation which do not contain such statement shall subject such corporation to the penalties hereinafter provided. Provided that nothing in this subsection shall be construed as permitting any such corporation to directly or indirectly give, pay, expend, or contribute or promise to give, pay, expend, or contribute any money or thing of value in order to aid or hinder the nomination or election of any person to any public office in this State.

(b) If any corporation authorized by Section (b)[1] hereof, or if any person, partnership or association makes any expenditure or incurs any obligation directly or indirectly for the purpose of influencing an election of the character described in Section (b) hereof, it shall be the duty of such corporation, person, partnership or association to file with the governing body of the political subdivision in which such election is held and also with the Secretary of State by mail, not more than ten (10) days nor less than five (5) days before the date of such election and also within ten (10) days after the date of such election, itemized, verified accounts correctly showing as of the date of filing, the amounts of money and description and value of all things given, paid, extended and contributed and the names of the recipients thereof and all amounts of money and description and value of all things promised or obligated to be given, paid, expended, and contributed, and the names of the promisees thereof, by such corporation, person, firm or association, in connection with such election; all such accounts to be verified under oath by an officer of such corporation, or by such person or member of the partnership or association as the case may be; provided, however, that no such corporation, person, partnership or association may give, pay, expend, contribute or promise to give, pay, expend, or contribute money and things of value of the total amount exceeding Seven Hundred and Fifty Dollars ($750), or exceeding Twenty-five Dollars ($25) for each one hundred population of the district, municipality or political subdivision according to the last preceding Federal Census in which such election is held, whichever amount is greater; provided further that such amounts expended may not, in fixing rates to be charged by such corporation, be charged as operating cost or capital. Any corporation, person, partnership or association failing to file the accounts as provided herein or filing an account which is false in any material respect, or violating the limitation or expenditures provided herein, shall be subject to the penalties hereinafter provided, but in no event shall any such corporation be authorized to spend more than Ten Thousand Dollars ($10,000) in any one election.

(c) Any person who violates any provision of this article, or who, as an officer, director or employee of a corporation, or as a member of a partnership or association, authorizes or does any act in violation hereof, shall be fined not less than one hundred dollars nor more than five thousand dollars, or be imprisoned not less than one nor more than five years, or be both so fined and imprisoned.

1 Now, Section (a) hereof.

Acts 1907, p. 169. Amended by Acts 1941, 47th Leg., p. 789, ch. 491, §4. Sec. (c) amended by Acts 1963, 58th Leg., p. 1017, ch. 424, §112. Amended by Acts 1977, 65th Leg., p. 743, ch. 276, §16, eff. Aug. 29, 1977.

(1978-79 Suppl).

Art 14.06 Corporations and Labor Organizations not to Contribute

(A) Except to the extent permitted in Section 317, Texas Election Code,[1] it is unlawful for any corporation, as defined in this Act, to make a contribution or expenditure, as defined in Section 237 of this code,[2] or any labor organization to make a contribution or expenditure, or for any candidate, office-holder, political committee, or other person to knowingly accept any contribution prohibited by this Article except as herein expressly provided.

(B) For the purpose of this section, "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

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1 Article 15.17.

2 Article 14.01.

(C) As used in this section, the phrase "contribution or expenditure" shall also include giving, lending, or paying any money or other thing of value, directly or indirectly, to any candidate, or political committee, campaign treasurer, assistant campaign treasurer, or any other person, for the purpose of aiding or defeating the nomination or election of any candidate or of aiding or defeating the approval of any measure submitted to a vote of the people of this state or any subdivision thereof; provided, however, that nothing in this section or in Section 317, Texas Election Code, shall prevent the making of a loan or loans to any candidate, office-holder, or political committee, for campaign or other lawful purposes by any corporation which is legally engaged in the business of lending money and which has conducted such business continuously for more than one year prior to the making of such loan, provided the loan is made in the due course of business and is not directly or indirectly a contribution. As used in the chapter, the phrase "contribution or expenditure" shall not include expenditures for the following purposes: communications, on any subject, by a corporation to its stockholders and their families or, if the corporation is an association, to its members and their families, or by a labor organization to its members and their families; nonpartisan registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and their families, or, if the corporation is an association, at its members and their families, or the establishment, administration and solicitation of contributions from the members and their families of one or more labor organizations, or

from the stockholders, employees and their families of one or more corporations, or from the members and their families of one or more associations to a separate segregated fund or other general purpose political committee to be utilized for political purposes by one or more corporations or one or more labor organizations. It is provided that it shall be unlawful for such a fund to make a contribution or expenditure by utilizing money or anything of value secured by physical force, job discrimination, or financial reprisals, or by threats thereof, or by dues, fees, or other moneys required as a condition of membership in a labor organization or as a condition of employment, or by moneys obtained in a commercial transaction.

(D) Any corporation or labor organization making or promising a gift, loan, or payment to any candidate, political committeee, campaign treasurer, assistant campaign treasurer, or other person in violation of this section shall be civilly liable for double the amount or value of such loan or gift, promised or made, to each opponent of the candidate, or political committee, opposed by such gift, loan, or payment. An opponent of the candidate is an opposing candidate whose name appeared on the ballot in the election in which the unlawful gift, loan, or payment was involved. The corporation or labor organization shall be civilly liable to the State of Texas for an amount equal to triple the amount or value of any unlawful gift, loan, or payment to any candidate, office-holder, political committee, campaign treasurer, or assistant campaign treasurer.

(E) Any corporation or labor organization that violates Subsection (A), (B), or (C) of this section shall be guilty of a felony of the third degree.

(F) Every officer or director of any corporation or labor organization who shall consent to any such unlawful gift, loan, or payment or such unlawful promise to give, lend, or pay by the corporation or labor organization shall be guilty of a felony of the third degree.

(G) Any candidate, office-holder, political committee, campaign treasurer, or assistant campaign treasurer who knowingly accepts such unlawful gift, loan, or payment from a corporation or labor organization shall be guilty of a felony of the third degree.

Amended by Acts 1973, 63rd Leg., p. 1105, ch. 423, §8, eff. June 11, 1973; Acts 1975, 64th Leg., p. 2262, ch. 711, §8, eff. Sept. 1, 1975; Subsec. (C) amended by Acts 1977, 65th Leg., p. 737, ch. 276, §6, eff. Aug. 29, 1977.

(1978-79 Suppl).